

The opinion in support of the remand being entered today was **not** written for publication in a law journal and is **not** binding precedent of the Board.

Paper No. 28

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID A. BERNHARDT

Appeal No. 2002-0962
Application No. 09/017,959

REMANDING TO EXAMINER

On May 28, 2002, applicant filed a Reply brief (Paper No. 27) in response to an Examiner's Answer (Paper No. 26) entered March 22, 2002.

In accordance with the revision effective December 1, 1997, Title 37, Code of Federal Regulations, § 1.193 states:

(b)(1) ... The primary examiner must be either acknowledge receipt and entry of the reply brief or withdraw the final rejection and reopen prosecution to respond to the reply brief.

In view of this revision, the examiner must acknowledge receipt and entry of the reply brief. Otherwise, if the examiner chooses to respond to the arguments presented in the Reply Brief, the examiner needs to reopen prosecution in order to respond to the Reply Brief (Paper No. 27).

Accordingly, it is

ORDERED that the application is remanded to the Examiner for such consideration of the Reply brief and for such further action as may be appropriate.

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the status of the appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS
AND INFERENCES

By: _____
Craig Feinberg
Program and Resource Administrator
(703) 308-9797

Appeal No. 2002-0962
Application No. 09/017,959

Page 3

CF/dal

HARNESS, DICKY & PIERCE
P.O. BOX 828
BLOOMFIELD HILLS, MI 48303